permissible for Ronald Lee to speculate that his examination will necessarily be outside the terms of the order of Court nor to anticipate that he is not permitted to disclose matters of his other clients under section 128(1) of the Evidence Act.

We also refer to Ronald Lee's argument that he had already assisted the Liquidators within the bounds of professional privilege. The Liquidators obviously think otherwise. We need not say anything further except to state that it is premature at this stage to say one way or the other whether he has disclosed everything in regard to the matters of the Company. The answer to that question must await the outcome of the examination.

We would finally refer to Ronald Lee's submission that the Court should not exercise its discretion under section 249 of the Companies Act, Cap. 185 on the ground that the Liquidators were seeking unfairly to scrutinise in advance the evidence against other parties against whom they were contemplating legal actions, in which case, he might be an important witness for the prospective defendants for whom he had acted. We totally reject this submission. We have in this case some most unusual features. The Company is in debt to the colossal extent of $51 million. All accounting records and the principal officers and employees of the Company have disappeared The Liquidators are perfectly entitled to conclude that a massive fraud has been perpetrated and they are anxious to ascertain the *modus operandi.* In discharge of their heavy responsibilities they have expressed the view that it was necessary to examine several persons, including Ronald Lee. Their views are entitled to be accorded due weight. We are completely satisfied that the proposed examination was requested by the Liquidators because it was necessary for them to investigate the matter and discharge their duties, one of which is to decide whether any action should be brought, and if so, against whom. In the circumstances of this case, it is not a valid objection to say that an examination may yield information which might be helpful in a future action: see *Re Spiraflite Ltd.*[3] , per Megarry J. (as he then was) at p. 769b, p. 771c to f and h j and p. 772 a b.

Appeal allowed.

Solicitors: *Shook Lin & Bok; G. Raman Singh & Partners.*

RE ESTATE OF SITI BTE. NAYDEEN

[O.C.J. (Chua J.) October 17, 1984]
[Singapore – Originating Summons No. 237 of 1984]

Islamic Law – Will – Validity of – Consent of heir.

In this case the testatrix had made a will appointing the defendant, her daughter-in-law to be the sole executrix and bequeathing all her real and personal properties to her as sole beneficiary of her estate. The deceased had two sons, Masdawood bin Ahdan, the husband of the defendant, who predeceased her and Mansor bin Ahdan, who survived her. The question for decision in this case was whether Mansor (who had since died) had consented to the whole estate being given to the defendant. The plaintiffs, who were the children of Mansor, sought certain declarations with respect to the will.

Held: (1) under the Islamic Law the will is valid only to the extent that the defendant is entitled to one third of the estate of the testatrix and the remaining two-thirds share goes to the estate of Mansor, unless Mansor in his lifetime had consented to the whole estate being given to the defendant;

(2) in this case on the balance of probabilities Mansor did not so consent.

ORIGINATING MOTION.

Miss Halimah bte. Abdul Jalil for the plaintiffs.
Mohamed Kamil Suhaimi for the defendant.

Cur. Adv. Vult.

Chua J.: By this Originating Summons the plaintiffs seek certain declarations with respect to the Will of Siti bte Naydeen and with respect to the estate of Mansor b. Ahdan deceased.

Siti bte Naydeen (the testatrix) died on the November 11, 1971, leaving a son Mansor b. Ahdan (Mansor) surviving her. The textatrix left a Will dated the November 16, 1965, (the Will) appointing the defendant, Zaleha bte Ibrahim, the sole executrix and bequeathing all her real and personal properties to the defendant as the sole beneficiary of her estate.

The defendant is the daughter-in-law of the testatrix, being the wife of Masdawood b. Ahdan (Masdawood) who died on the August 24, 1964.

The testatrix was at the date of her death the owner of the property known as No. 117, Lorong H, Telok Kurau, built on Lot 2611 of Mukim 26, Grant No. 1, District of Siglap (the said property). That was her only property. The

testatrix lived at No. 117 with Masdawood and his family. Mansor, his wife and children (who are the plaintiffs in this O.S.) lived at No. 117A, Lorong H, Telok Kurau, erected on Lot 2611.

On July 7, 1972, Probate of the Will of the testatrix was granted to the defendant (Probate No. 538 of 1972) as the sole executrix. Pursuant to the provisions of the Will, the defendant conveyed the said property to herself as the sole owner by way of Deed of Assent dated February 9, 1973.

Mansor died on May 22, 1979. His wife died on June 7, 1983.

On January 27, 1984, the defendant sold the said property for $770,000.00. The third plaintiff, Abdul Rahman b. Mansor, was then living at No. 117A and a sum of $100,000 was paid to him as compensation for his delivering up vacant possession of the house so that the defendant could sell the said property with vacant possession.

On the application of the plaintiffs in Probate No. 538 of 1972 an order for an interim injunction was granted by the Court on March 16, 1984, and served on the defendant which order, *inter alia,* required the defendant to pay into Court the proceeds of the sale of the said property. On March 22, the defendant paid into Court the sum of $661,500.

The parties are agreed that under Muslim Law the Will is valid only to the extent that the defendant is entitled to one-third share of the estate of the testatrix and that the remaining two-thirds share goes to the estate of Mansor unless Mansor in his life time had consented to the whole estate being given to the defendant.

So the sole question for the decision of the Court is, did Mansor consent as alleged by the defendant or he did not consent as maintained by the plaintiffs?

The story of the defendant is that before the testatrix made her Will she told Mansor in the presence of the defendant and the defendant's son Abdullah b. Masdawood that she would make a will giving all her properties to the defendant absolutely. Mansor indicated his approval and did not object. After the death of the testatrix the defendant showed the Will to Mansor in the presence of defendant's son, Abdullah b. Masdawood. Mansor advised the defendant to transfer the said property to defendant's name saying that if he (Mansor) were to die before the transfer there would be problems. After the Deed of Assent had been executed the defendant showed it to Mansor in the presence of Abdullah b. Masdawood and Mansor indicated his approval and satisfaction as the transfer of the said property to defendant's name had been completed. Mansor never raised any objection to the Will and to the Deed of Assent nor changed his mind even up to the time of his death which was about eight years after the death of the testatrix and about six years after the execution of the Deed of Assent. The defendant believed that the plaintiffs, at all material times, knew about the Will and also about the consent of their father, Mansor, to the Will and for about five years after the death of Mansor, they remained silent and did not take any action to convey their objection to the Will. They only voiced their objection after the said property had been sold by the defendant.

The defendant says that Mansor consented for the following reasons:

(a) The defendant since her marriage to Masdawood was living with the testatrix. None of the testatrix's other children lived with her.

(b) It was Masdawood who purchased the land and erected the house No. 117 in 1939 and put the said property in the name of the testatrix.

(c) The defendant, as a daughter-in-law living under the same roof, served and took care of the testatrix until her death, especially towards the end of her life when the testatrix could not walk.

(d) Mansor was very close to the defendant and her family.

(e) It was Masdawood who paid for the building of No. 117A for Mansor.

(f) Mansor was aware of these facts and knew that the said property was in reality the property of Masdawood and should revert to Masdawood's family.

The evidence adduced by the plaintiffs on affidavits is this. In or about 1962 Mansor was invited by the testatrix to erect the house No.

117A, which was behind the testatrix's house, as the testatrix wanted her only surviving child Mansor to stay close to her. Mansor was very close to his family and any fact regarding the family would be communicated by Mansor to his family. At no time had Mansor or any member of his family been informed by the testatrix that the testatrix would be making a will giving all her properties to the defendant absolutely. Neither did the defendant ever show the Will to Mansor who knew nothing about the existence of the Will. Sometime in early 1971 the testatrix approached Mansor to keep the Grant of the said property for safe custody and for his use if necessary as Mansor was then living in poverty but as Mansor himself was in bad health he told the testatrix to keep the Grant herself as he might pre-decease her.

On or about November 14, 1971, three days after the testatrix's death, Mansor called at the testatrix's house where all the plaintiffs and the children of Asnah bte Ahdan (the testatrix's daughter) gathered and each of the testatrix's grand-daughters received a share of the testatrix's jewellery and clothing. When Mansor asked the defendant for the Grant of the said property the defendant answered that she had mislaid it and would look for it and return it to Mansor. Mansor was not satisfied with the defendant's answer and warned her repeatedly not to cheat him. Since then Mansor's relationship with the defendant was strained as frequent quarrels arose due to the defendant insisting that the Grant might have been lost and denying that she had ever had the Grant in her possession. The defendant kept on insisting that she had no knowledge of the Grant. Mansor kept on grumbling and cursing the defendant and called her a swindler.

None of the plaintiffs or Mansor knew that the defendant had taken out the Grant of Probate and subsequently conveyed the said property to herself absolutely.

The defendant had not at any time informed Mansor or the plaintiffs of her rights under the Will nor was consent ever sought from Mansor renouncing his interest.

Mansor was a poor old complacent and sickly man and he did not think of engaging any solicitor to look into the matter and it was left in abeyance.

The full facts of what actually had occurred to the testatrix's property after the testatrix's death, before and after Mansor's death, were only discovered fully by the plaintiffs after the plaintiffs' solicitors had made a thorough investigation.

It is incumbent on the defendant to prove what she contends, that Mansor consented. The standard of proof is satisfied on a balance of probabilities.

Numerous affidavits were filed by each party to support their allegations of facts and to dispute the allegations of facts of the other side.

The Statutory Declarations made by Omar b. Mohd. Mingoo, Aminah bte Hannan and Maria bte Bahri (exhibited in the defendant's affidavit sworn to on the September 1, 1984) none of them corroborated the defendant's allegations that Mansor knew the existence of the Will and that Mansor knew of his rights to two-thirds share in the testatrix's property notwithstanding the Will and that Mansor renounced his said interest in favour of the defendant before or after the Deed of Assent was executed by the defendant in her favour in 1973.

There is also no evidence to support the defendant's allegations that the said property was bought by the defendant's husband and put in the name of the testatrix. It was the testatrix's husband Ahdan b. Yusof who bought the said property.

The plaintiffs have shown that house No. 117A was built by Mansor and not by Masdawood as alleged by the defendant. Masdawood would not be so generous as to persuade Mansor and his family to live in a newly-built house free of rent while he and his family and the testatrix and the others continued living in an old house.

The defendant seeks to support her contention that Mansor consented by the Statutory Declaration of her son Abdullah b. Masdawood in which Abdullah stated:

(i) that sometime in 1965 the testatrix in his presence had a discussion with the defendant and Mansor that she would like to leave to the defendant by Will all her property and that Mansor "did not object to the wishes of the testatrix";

(ii) that he was present when the testatrix executed her Will on November 16, 1965;

(iii) that after the testatrix's death, Mansor, the defendant and he had a discussion on the Will which was shown to Mansor.

(iv) that Mansor advised the defendant to transfer the said property to the defendant's name as soon as possible as he was afraid that if he were to die before the said property was transferred to the defendant's name "the matter might become complicated but he did not elaborate on same";

(v) that after the Grant of Probate was issued to the defendant she proceeded to have the said property transferred to her name by way of Deed of Assent;

(vi) that the defendant showed the Deed of Assent to Mansor in his presence and Mansor "was satisfied that the transfer of the said property to my mother's name had been completed";

(vii) that Mansor up to the time of his death did not change his mind with regard to the testatrix's Will nor did he object to the testatrix bequeathing all her property to the defendant nor to the transfer of the said property to the defendant's name.

I have to weigh this evidence of Abdullah with great care. It would appear that at the discussion in 1965 Mansor did not specifically give his consent, he merely "did not object to the wishes of the testatrix". It would also appear that Mansor was overjoyed over the whole matter. It was he who advised the defendant to have the said property transferred to her name or "the matter might become complicated".

It is not disputed that Mansor was a poor, sickly old man. It is inconceivable that he was happy that his mother should give all her property to one person, the defendant, when he had four children and an old wife to support. If at all Mansor did consent and was happy about it, surely the defendant would have got the written consent of Mansor.

On the balance of probabilities I find that Mansor did not consent.

Order accordingly.

Solicitors: *H.A. Jalil & Associates; Kamil & Co.*

GOMEZ NEE DAVID v. GOMEZ

[D.C.A. (Coomaraswamy J.) November 1, 1984]
[Singapore – District Court Appeal No. 24 of 1984]

Family Law – Maintenance – Enforcement order for payment of arrears – Factors to be taken into account in deciding how far back arrears should be ordered – Women's Charter (Cap. 47), ss. 61 & 109.

English Law – When binding in Singapore

The appellant applied for an enforcement order for payment of arrears of maintenance which totalled $6,230.00 from the date of default, i.e. from December 1981. The learned Magistrate after hearing evidence of the parties considered it appropriate to enforce only one year's maintenance totalling $2,760.00. He expressly stated that his order "does not release him (the former husband) from his liability to pay so long as the order remained in force".

The appellant appealed against the order of restriction of arrears.

Held: (1) a Singapore magistrate acting under section 61 of the Women's Charter has jurisdiction to order the payment of arrears of more than one year from the date of the complaint;

(2) the learned magistrate appeared to have been influenced by the fact that his decision would not bar the appellant from bringing a civil suit for any balance of arrears of maintenance due to her. In this context, a multiplicity of proceedings was not desirable, particularly where a party was resident abroad;

(3) Justice would best be done by remitting this case back to the magistrate so that he may decide how far back he should order arrears from the date of the complaint. He should do so without being bound by any English fetter of practice or custom of not ordering arrears beyond one year.

Obiter dictum: "The binding nature of English cases must be looked at against the context of the topic of law in question. Where under the provisions of our law the law of England is made the law in Singapore, courts in Singapore will feel bound by and apply the decisions of English courts in exactly the same way as a corresponding court in England would. This is of course subject to any provisions in Singapore statute making the law of England applicable in Singapore. An example of such a law is section 5 of the Civil Law Act, Chapter 30."

Cases referred to:

(1) *Pilcher* v. *Pilcher (No. 2)* [1956] 1 W.L.R. 298; [1956] 1 All E.R. 463.

(2) *Luscombe* v. *Luscombe* [1962] 1 W.L.R. 313; [1962] 1 All E.R. 668.

(3) *Amrick Lall* v. *Sowbaiavati* [1973] 2 M.L.J. 191.

(4) *Ross* v. *Pearson* [1976] 1 W.L.R. 224; [1976] 1 All E.R. 790.